



GEORGIA GOVERNMENT TRANSPARENCY & CAMPAIGN FINANCE COMMISSION

Advisory Opinion

No. 2023-01

In response to an advisory opinion request on February 21, 2023, from Stacey Evans and Beth Camp (“Requestors”), the Georgia Government Transparency and Campaign Finance Commission (“Commission”) advises that caregiving expenses for a minor child or dependent for which a candidate has direct caregiving responsibility incurred as a direct result of campaign activity or holding public office is an ordinary and necessary campaign expenditure as contemplated by O.C.G.A. § 21-5-33(a).

Questions Presented in Request for Advisory Opinion 2022-01

1. Are caregiving expenses-defined as direct care, protection, and supervision of a child or other person with a disability or a medical condition for which a candidate has direct caregiving responsibility-incurred as a direct result of a campaign activity and holding public office deemed a permissible campaign expenditure in the state of Georgia?

Factual Background

Pursuant to a written request for advisory opinion dated February 21, 2023, Representatives Stacey Evans and Beth Camp, seek guidance as to whether caregiving expenses for children and dependents are ordinary and necessary campaign expenses. An ordinary and necessary expense includes but is not limited to,

“”[...] expenditures made during the reporting period for qualifying fees, office costs and rent, lodging, equipment, travel, advertising, postage, staff salaries, consultants, files storage, polling, special events, volunteers, reimbursements to volunteers, repayment of any loans received except as restricted under subsection (i) of Code Section 21-5-41, contributions to nonprofit organizations, flowers for special occasions, which shall include, but are not limited to, birthdays and funerals, attorney fees connected to and in the furtherance of the campaign, and all other expenditures contemplated in Code Section 21-5-33.”

O.C.G.A. § 21-5-3(18).

Contributions may only be expended on ordinary and necessary expenses incurred in connection with the candidate’s campaign or fulfillment of the public office they occupy. *See* O.C.G.A. § 21-5-33(a). Requestors assert the Federal Elections Commission (“FEC”) has previously issued guidance on this issue which allowed campaign contributions to be utilized for childcare in connection with campaign activity and fulfillment of their public office. As the Commission has



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never answered this question, Requestors seek clarity as to whether caregiving expenses are an ordinary and necessary expense.

Discussion and Legal Analysis

The sole question asked by Requestors is one of first impression for the Commission to answer. Persuasive authority from the FEC reveals this question has been answered four times by Advisory Opinion about childcare. In FEC AO 1995-42(McCrery), AO 2018-06, AO 2019-13, and AO 2022-07, childcare expenses incurred because of campaign activities are permissible. The FEC in their analysis asks the question, “Would these costs for childcare occur irrespective if the candidate was not running for office?”. If the answer is “yes”, then the candidate may not use campaign funds to pay for childcare, but if the answer is “no” and the childcare costs are solely incurred because of campaign activities or in the fulfillment of their public office, then utilizing campaign funds is permissible.

One of the Commission’s prominent functions is to prevent the misuse of campaign funds. *See generally* O.C.G.A. § 21-5-2. Further, public officers and candidates for public office are barred from converting campaign funds into personal assets. *See generally* O.C.G.A. § 21-5-33. In the present analysis, the childcare and dependent costs are being incurred as a *direct result* of campaign activity or holding public office. Because these costs are incurred by candidates in furtherance of their campaign (i.e., they can attend a campaign function because they have childcare) or are in fulfillment of their public office (i.e., they can fulfill their duty as a public official because they have childcare), childcare or dependent care directly incurred because of campaign activity or fulfilling a public office is considered an ordinary and necessary expense.

An analogous examination of an ordinary and necessary expense for a public officer or candidate has been previously considered by the Commission in the form of legislative housing for members of the General Assembly. Many members of the General Assembly who come from far reaches of the state rent apartments or homes while in session and utilize campaign funds to pay for their temporary housing. Legislative housing is considered an ordinary and necessary expense because legislators must be present in Atlanta to fulfill their duties as legislators. The classic “but-for test” rules the day; but-for their duties as legislators, would they incur this housing cost? The answer is no and thus they can utilize campaign funds for legislative housing to fulfill the duties of their elected office.

Candidates and public officials should exercise caution when utilizing campaign funds for childcare or dependent care. Most elected officials serve as public officials part-time. Nothing in this opinion should be construed to allow campaign funds to be utilized for child or dependent care when the cost is incurred due to non-campaign or non-public office activities. Because of the part-



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time nature of holding office, the Commission advises it is best practice to keep a log of childcare expenses and corresponding political activities in case of an investigation or audit.

Accordingly, the Commission advises that caregiving expenses for a child or other person with a disability or a medical condition for which a candidate has direct caregiving responsibility incurred as a direct result of campaign activity or holding public is an ordinary and necessary expense under O.C.G.A. § 21-5-3(18).

The Commission advises candidates and public office holders there may be tax implications revolving around child and dependent care but as these matters fall outside the jurisdiction of the Commission, makes no determination how these should be disclosed on tax documents.

Conclusion

The Georgia Government Transparency and Campaign Finance Commission advises that caregiving expenses may constitute an ordinary and necessary expense as defined by O.C.G.A. § 21-5-3(18), for which a candidate, campaign committee, public officer holding elective office, or member of their staff may expend contributions pursuant to O.C.G.A. § 21-5-33(a).

This Advisory Opinion concerns the application of the Georgia Government Transparency and Campaign Finance Act, or regulations prescribed by the Georgia Transparency and Campaign Finance Commission, to the specific facts, transaction, or activity set forth for Advisory Opinion 2023-01.

Advisory Opinion 2023-01 is hereby adopted by the Commission in conformity with O.C.G.A. § 21-5-6(13) on June 26th, 2023.



Chairman

AO 2023-01 prepared by:



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